BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LIZABETH K. BONNER	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,029,159
NORLAND PLASTICS COMPANY	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INDEMNITY COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the July 13, 2006 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined claimant's alleged injury arose out of and in the course of her employment with respondent.

ISSUE

Did claimant's alleged injury arise out of and in the course of her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant worked for respondent as a machinist assistant, when, on April 9, 2006, she suffered an injury to her right knee. Claimant testified that her job duties required she work on three separate machines. On the date of the alleged accident, she was hurrying from machine to machine, trying to catch up, when she fell. Claimant admitted there

was nothing on the floor to cause her to fall, as far as she remembered. However, on cross-examination, respondent's attorney asked:

> Q. And was there anything on the floor - -
>
> A. It happened so fast.
>
> Q. Was there, and as I understand what you were saying, you were going from one machine to the other, and apparently you just slipped?
>
> A. Yes.[1]

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[2]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[3]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[4]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental

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[1] P.H. Trans. at 12.

[2] K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

[3] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[4] K.S.A. 2005 Supp. 44-501(a).

> injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[5]

K.S.A. 44-508(d) defines "accident" as,

> . . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.[6]

Injury or personal injury has been defined to mean,

> . . . any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.[7]

Respondent's brief cites several cases where a claimant is injured just performing simple daily tasks, like walking, or turning, or getting out of a truck. However, respondent does not supply a case where the claimant is hurrying to do a job, and falls, suffering an injury. Other than falling, the only description of this accident is contained in respondent attorney's question whether claimant "slipped." While the Board acknowledges that walking is a normal activity of daily living, the Board is unaware of any case which states that slipping is a normal activity of daily living.

The Board finds that claimant's activities involving running, in order to catch up, and the resulting slip and fall, are not activities of daily living, but are, instead, events of an unfortunate nature, which resulted in a lesion to claimant's knee. The Board, therefore, finds the determination by the ALJ that claimant's injuries did arise out of and in the course of her employment should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 13, 2006, should be, and is hereby, affirmed.

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[5] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[6] K.S.A. 2005 Supp. 44-508(d).

[7] K.S.A. 2005 Supp. 44-508(e).

IT IS SO ORDERED.

Dated this ____ day of September, 2006.

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier